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DOCKET FILE COPY ORIGINAL

June 22, 1995

EX PARTE OR LATE FILED

Ex Parte

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

RECEIVED

JUN 22 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Re: Expanded Interconnection Tariff Investigation, CC Docket No. 94-97

Dear Mr. Caton:

In accordance with the Commission's rules governing ex parte presentations, please be advised that yesterday I represented Southwestern Bell in a meeting with Geraldine Matise, David Nall, Ann Stevens and Suzan Friedman of the Tariff Division and Linda Haller of the General Counsel's office to discuss possible accommodations regarding disclosure of proprietary information.

Because this meeting ended late, this letter is being filed today. Please stamp and return the provided copy to confirm receipt. If you should have any questions, please give me a call.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sandra L. Wagner", written in dark ink.

Attachment

cc: Geraldine Matise  
David Nall  
Ann Stevens  
Suzan Friedman  
Linda Haller

No. of Copies rec'd  
List A B C D E

0+1

(6/21/95 Version)

**PROPOSED TERMS FOR PROTECTIVE ORDER:**

1. This Protective Order implements the Common Carrier Bureau's (Bureau's) November 1, 1994 letter ruling regarding disclosure of the cost support data filed by Southwestern Bell Telephone Company (SWBT) in connection with its virtual collocation service, and modifies the Protective Order issued November 1, 1994 by the Bureau.. Letter from Kathleen M. H. Wallman to Jonathan E. Canis, et al., FOIA Control Nos. 94-310, 324 and 328, DA 94-1214 (November 1, 1994). In that ruling, the Bureau conditionally granted several Freedom of Information Act (FOIA) requests seeking access to itemized equipment and overhead costs included in SWBT's virtual collocation tariff review plan. While denying the requests for public release under the FOIA, the Bureau ruled that the cost support data must be disclosed to all parties to the virtual collocation tariff review proceeding for the sole purpose of permitting participation in that proceeding. The limitations on disclosure incorporated herein are intended to protect the competitive interests of the parties in this proceeding. Accordingly, this Protective Order shall control the production of information and documents in this matter.

**Definitions**

2. The term "party" as used in this Protective Order means any party to the Federal Communication Commission (Commission) CC Docket No. 94-97 and, for purposes of this Order during the pendency of this docket at the Commission, the Commission's Staff.

3. The term "Confidential Information" refers to all documents, data, information, studies and other materials furnished under requests for confidential treatment including, but not limited to, cost study information that is claimed to be trade secrets, confidential business information or information subject to an evidentiary privilege. "Confidential Information" shall include the term "Highly Sensitive Confidential Information" as defined herein.

4. The term "Highly Sensitive Confidential Information" is a subset of "Confidential Information" and refers to information that the producing party claims is of such a highly sensitive nature that the making of copies of such information by a propounding party having access to such information as contemplated in Paragraph 8 of this Protective Order would expose the responding party to an unreasonable risk of harm.

**Procedure - Generally**

5. In the filings to be made in this docket, a producing party may designate certain documents and information produced by such party as "Confidential." All such documents and information

shall be clearly labeled to show that the documents are considered "Confidential."

6. All Confidential Information produced pursuant to this Protective Order shall be made available solely through counsel for the parties, including in-house counsel, for up to five persons, including counsel, or working under the supervision of counsel, from the following categories:

(a) attorneys, including in-house counsel, actively engaged in the conduct of this proceeding; to the partners, associates, secretaries, paralegal assistants, and employees of such an attorney to the extent reasonably necessary to assist in the review of tariff support materials and the preparation of documents in the proceeding;

(b) any person requested by counsel of record to furnish technical or other expert services, or otherwise to prepare material for the proceeding, except that disclosure to personnel in a position to use the information for competitive commercial or business purposes shall be limited to the minimum extent disclosure to such personnel is necessary to obtain analysis and management guidelines for participation in this proceeding and;

(c) in the event the Commission orders that depositions may be taken, persons noticed for depositions or designated as witnesses to the extent reasonably necessary in preparing to testify to outside consultants or experts retained for the purpose of assisting counsel in the proceeding.

Parties to this proceeding who are not signatories hereto shall not be entitled to receipt of any Confidential Information.

Before any competitor (or an employee of a competitor) of the equipment vendors whose prices may be contained in Confidential Information (or one of the subsets thereof) may obtain such information, the competitor shall give at least ten days' advance notice in writing (initially via facsimile followed by first class mail, postage prepaid) to counsel for any equipment vendor whose data are to be disclosed, stating the name and address of the person[s] to whom disclosure is to be made and stating the purpose of such disclosure. The facsimile numbers and addresses for notice to the vendors are listed on Exhibit \_\_\_\_\_. Copies of the notice should be served on the Commission and all parties of record. If, within the ten-day period, a motion is filed objecting to the proposed disclosure, a disclosure is not permissible until the Commission has denied such motion.

7. Prior to giving access to Confidential Information as contemplated in Paragraph 6 above, to any person authorized to be given access pursuant to this Order, counsel for the party seeking review of the Confidential Information shall deliver a copy of this

Protective Order to such persons, and prior to disclosure, each such person shall agree in writing to comply with and be bound by this Protective Order in the form of Exhibit A, attached hereto. Said counsel shall, at the time of the review of such Confidential Information, or as soon thereafter as practical, deliver to counsel for the party producing the Confidential Information a copy of Exhibit A as executed, which shall show each signatory's full name, permanent address and employer, and the party with whom the signatory is associated.

8. Any party producing Confidential Information pursuant to this Order shall designate a Washington, D.C. location where all parties shall be permitted access to and review of requested Confidential Information pursuant to the other terms of this Order. Any such access and review shall be limited to regular business hours after reasonable notice by the requesting party.

#### Procedure - Confidential Information

9. The procedures set forth in this paragraph apply with respect to production and review of information claimed to be Confidential Information, unless (1) the producing and reviewing parties agree otherwise, or (2) as otherwise required by the provisions of this Protective Order.

After reasonable request, two copies of information designated by the producing party as Confidential Information will be delivered to the party that requested the information, unless that information is voluminous. Unless otherwise ordered, voluminous information shall mean information which contains 200 pages or more. The two copies of the Confidential Information shall be provided to the requesting party's counsel of record who has agreed in writing to be bound by this Protective Order.

The information produced shall be organized in a manner that clearly identifies each document or portion thereof that is claimed to be Confidential. SWBT shall be responsible for producing the Confidential Information in a sealed envelope that is clearly marked on the outside as containing Confidential Information and that clearly specifies the numbers of pages contained therein.

The copies are to be made by or under the supervision of the personnel of the party who produced such document, who will affix a stamp to each item to be copied denoting the Confidential designation of the item. The stamp shall be affixed in such a manner so that the text of the Confidential Information is not obscured on either the original or any copies thereof.

Counsel of record for the person authorized hereunder who requested the copies shall sign a statement in the form of Exhibit B attached hereto verifying that the sealed envelope clearly marked

as containing Confidential Information has been received and designating the name and address of the individual into whose custody the copies shall be delivered. The designated representative of the producing party shall also sign Exhibit B and verify to whom the sealed envelope was delivered. Access to said copies shall be limited to those persons defined in Paragraph 6 of this Order. No additional copies shall be made, unless the parties agree otherwise, or upon a showing of a good cause the Commission directs otherwise.

Persons who have agreed in writing to be bound by this Protective Order and are therefore permitted access to Confidential Information by this Order may take notes regarding such information as may be necessary in connection with this proceeding. Such notes shall be treated in the same manner as the Confidential Information from which the notes were taken.

Voluminous information designated as Confidential Information may be reviewed at the producing party's Washington, D.C. location, as described in Paragraph 10 of this Protective Order.

Procedure - Highly Sensitive Confidential Information

10. The following procedures apply with respect to production and review of information claimed to be Highly Sensitive Confidential Information, unless (1) the producing and reviewing parties agree otherwise, or (2) as otherwise required by the provisions of this Protective Order.

Information claimed to be Highly Sensitive Confidential Information must be made available at the producing party's Washington, D.C. location within a reasonable time. The producing party shall make that information available as specified herein. Persons permitted access to Highly Sensitive Confidential Information by this Order who have agreed in writing to be bound by the Protective Order may only take notes regarding such Highly Sensitive Confidential Information as may be necessary in connection with this proceeding consistent with the purpose of this Protective Order. Such notes shall be treated in the same manner as the Highly Sensitive Confidential Information from which the notes were taken. If the notes contain Highly Sensitive Confidential Information, the notes shall not be allowed out of the room in which access to the Highly Sensitive Confidential Information is permitted. If the notes do not contain Highly Sensitive Confidential Information, they may be removed from the room, subject to the other provisions of this Protective Order.

As with Confidential Information, individuals granted access to Highly Sensitive Confidential Information are restricted from disclosing the content of the Highly Sensitive Confidential

Information to any individual not qualified under paragraph 6 of this Protective Order.

Storage at the Commission

11. Confidential Information, including that portion of testimony containing references thereto, if filed with the Commission, shall clearly be labeled as Confidential and filed under seal, and shall be segregated in the files of the Commission, and shall be withheld from inspection by any person not bound by the terms of this Protective Order, unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties, or, after notice to the parties and hearing, pursuant to the order of the Commission Staff, the Commission, or a court having jurisdiction.

Good Faith Use of Material

12. To the extent that such efforts will not damage a party's presentation of its position in this docket, each party shall use its best efforts to phrase its filings in a way which will eliminate or minimize the need for documents in the record to be under seal.

13. All such persons shall use their best efforts to keep the Confidential Information secure in accordance with the purposes and intent of this Protective Order. To this end, persons having custody of any Confidential Information shall keep the documents properly secured during all times when the documents are not being reviewed by a person authorized to do so.

As obtained pursuant to this Order, Confidential Information shall be used exclusively for purposes of participating in this proceeding, including any appeals, and shall not be used or disclosed for any other purpose. The limitation on the use or disclosure of Confidential Information shall be construed to prohibit disclosure of all information contained therein and to prohibit making decisions, participating in any decision making process or rendering advice, legal or otherwise, wherein any information or knowledge derived from said information is utilized in any manner other than for purposes of this proceeding.

Persons obtaining access to Confidential Information under the terms of this Order may disclose, describe, or discuss the information contained therein in any pleading filed in the virtual collocation tariff review proceeding, but only if the following procedures are observed: (a) Any pleading that includes specific information contained in Confidential Information shall be filed under seal and clearly marked "Contains Confidential Information Subject to Protective Order, DA 94-1215" and covered by a separate letter referencing this Order. (b) Any pleading that includes specific information contained in a producing party's

Confidential Information shall be served only upon the Commission, the producing party, and any vendor whose equipment prices may be included in the Confidential Information and reflected in the pleading. Parties shall take care not to allow one vendor's prices to be disclosed to another vendor under this paragraph. (c) Any party filing a pleading in accordance with subpart (a) of this paragraph shall also file with the Commission a separate public version in which all specific information that is contained in Confidential Information has been redacted. Any such public version shall be:

(i) hand delivered to the producing party and any vendors whose equipment prices are included in Confidential Information and reflected in the unredacted version of the pleading on the same date that the confidential version is filed with the Commission under subpart (a) of this paragraph;

(ii) filed with the Commission for inclusion in the public record five working days following submission of the confidential pleading under subpart (a) of this paragraph; and

(iii) served on all parties to the virtual collocation tariff review proceeding on the same date that it is filed with the Commission under subpart (c)(ii) of this paragraph, unless SWBT or a vendor whose confidential prices are contained in SWBT's virtual collocation cost support data objects in writing to such service.

#### Returning Material to Party

14. The parties hereto affected by the terms of this Protective Order further retain the right to question, challenge and object to the admissibility of any and all data, information, studies and other matters furnished under the terms of the Protective Order.

15. Upon completion of this proceeding and judicial review, all Confidential Information furnished under the terms of this Protective Order shall, upon request made within thirty (30) days, be returned within thirty (30) days to the party who produced such Confidential Information. Notes taken with regard to Confidential Information shall be destroyed at the time other Confidential Information is returned, in the presence of the party who produced the Confidential Information if that party so requests. Confidential Information made part of the record in any proceeding shall remain in the possession of the Commission, and, unless otherwise agreed by the party that produced the information or as provided by future order, shall continue to be subject to the protective requirements of this Protective Order.

Other Rights Preserved

16. This Protective Order shall in no way constitute any waiver of the rights of any party herein to contest any assertion of confidentiality or to appeal any finding that specific information is Confidential Information or should be subject to the protective requirements of this Order. The designation of any information as Confidential Information may be challenged to the Commission, or a court having jurisdiction for a determination, after hearing, as to whether said material should be so classified.

Disclosure of Confidential Information under this Protective Order shall not be deemed a waiver by either the producing party or the vendors whose data are contained therein, in any other proceeding, agency, or court, of any privilege or entitlement to confidential treatment. Any parties receiving access to Confidential Information under this Order:

- (a) agree not to assert any such waiver;
- (b) agree not to use information derived from Confidential Information in any proceeding or for any purpose other than this proceeding; and
- (c) agree that accidental disclosure of privileged information shall not be deemed a waiver of the privilege.

17. Nothing contained herein shall limit any party's right to judicial review of any decisions rendered hereunder.

18. Any failure to abide by the terms of this protective order may result in the imposition of sanctions, including dismissal of a party's petitions or censure, suspension, or disbarment of the attorneys involved. See 47 C.F.R. Section 1.24.

**EXHIBIT A**

**CC DOCKET NO. 94-97  
Protective Order**

I agree to comply with and be bound by the terms and conditions of this Protective Order.

**SIGNATURE:**

\_\_\_\_\_

**NAME PRINTED:**

\_\_\_\_\_

**TITLE:**

\_\_\_\_\_

**ADDRESS:**

\_\_\_\_\_

\_\_\_\_\_

**REPRESENTING:**

\_\_\_\_\_

**EMPLOYER:**

\_\_\_\_\_

**DATE:**

\_\_\_\_\_

**EXHIBIT B**

**CC DOCKET NO. 94-97**

The copies listed on "Attachment A" have been provided to Counsel of Record indicated below, pursuant to the terms of the Protective Order entered in CC Docket No. 94-97.

These copies will remain in the custody of:

\_\_\_\_\_  
Name Printed

**STATEMENT OF RECEIPT**

I, \_\_\_\_\_, as  
(COUNSEL OF RECORD) OR (DESIGNATED REPRESENTATIVE) (circle one)

have received the sealed envelope marked "Confidential Information." These copies are to remain in the possession of:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Signed on this \_\_\_\_\_ day of \_\_\_\_\_, 1994

\_\_\_\_\_  
Name.

**ATTACHMENT "A"**

CC DOCKET NO. 94-97 \*\* Protective Order

Copies of the following documents have been provided to Counsel of Record, pursuant to the terms of the Protective Order entered in CC Docket No. 94-97.

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